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of Nevada ex rel. Board of Regents of

the Nevada System of Higher Education,

on behalf of the University of Nevada,

Las Vegas and Vernon Hodge

10 **IN THE UNITED STATES DISTRICT COURT**

11 **FOR THE DISTRICT OF NEVADA**

12
13 SUJANIE V.S.V. GAMAGE aka SUJANIE
14 GAMAGE SAMARASEK,

15 Plaintiff,

16 vs.

17 THE STATE OF NEVADA ex rel. BOARD
18 OF REGENTS OF THE NEVADA
19 SYSTEM OF HIGHER EDUCATION, on
20 behalf of THE UNIVERSITY OF
21 NEVADA, LAS VEGAS; a Political
22 Subdivision of the State of Nevada;
23 VERNON HODGE, individually and in his
24 official capacity as an employee of the
25 University of Nevada, Las Vegas; and DOES
26 I-XX inclusive,

27 Defendants.

CASE NO.: 2:12-cv-00290-GMN-VCF

28 **ANSWER TO COMPLAINT**

Defendants, The State of Nevada ex rel., its Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las Vegas ("UNLV") and Vernon Hodge, individually and in his official capacity ("Hodge" and collectively "Defendants") by and through counsel, Elda M. Sidhu, General Counsel, University of Nevada, Las Vegas, and J. Marty Howard, Assistant General Counsel, University of Nevada, Las Vegas, respectfully submit their

1 Answer to Plaintiff's Complaint.

2 1. Admit Plaintiff at all times relevant to the Complaint was a student at UNLV. In
3 fact, Plaintiff is still registered and enrolled in the Chemistry Ph.D. program. Defendants lack the
4 knowledge or information sufficient to form a belief about the truth of the remaining allegations
5 and therefore deny.

6 2. Defendants deny any Defendant named in the caption and/or this paragraph is a
7 political subdivision of the State of Nevada. Defendants would admit in substance the remaining
8 allegations contained within this paragraph. It should be noted the University is not a legal entity
9 that can be sued. In accordance with NRS 396.020, the legal and corporate name of the State
10 University is the University of Nevada. The University of Nevada includes, among others, the
11 universities and colleges in the State of Nevada. This system is collectively known as the Nevada
12 System of Higher Education ("NSHE"). The named Defendant in this matter is an entity or
13 institution of the State of Nevada.

14 3. Admit.

15 4. Plaintiff has failed to include a paragraph 4. Defendants deny any allegations
16 which would be contained in any alleged paragraph 4.

17 5. Defendants lack the knowledge or information sufficient to form a belief about the
18 truth of the allegations within this paragraph and therefore deny.

19 6. Defendants lack the knowledge or information sufficient to form a belief about the
20 truth of the allegations within this paragraph and therefore deny.

21 7. Admit.

22 8. Admit Plaintiff at all relevant times to the Complaint was a student at UNLV in the
23 Chemistry Ph.D. program. Plaintiff could not reasonably expect to graduate until she properly
24 completed the dissertation process. Defendants lack the knowledge or information sufficient to
25 form a belief about the truth of the remaining allegations within this paragraph and therefore deny.

26 9. Admit.

27 10. Admit on or about June 15, 2011 Defendant Vernon Hodge submitted a typewritten
28 UNLV Alleged Misconduct Report and/or a UNLV Alleged Academic Misconduct Report form(s)

1 to Director Philip Burns of the UNLV Office of Student Conduct ("OSC") which contained
2 charges of multiple examples of plagiarism by Plaintiff and Plaintiff's failure to take advantage of
3 a second chance to remove all plagiarized material from her dissertation. Also, the Academic
4 Misconduct Report signed by Plaintiff has a box checked which states: "The student accepts
5 responsibility for the violation but does not accept the academic sanction(s) and requests a
6 hearing". The two documents speak for themselves. Phillip Burns has not been properly named
7 (he is not in the caption) and/or served as a Defendant in this matter. Defendants deny each and
8 every other allegation within this paragraph.

9 11. The Student Academic Misconduct Policy in paragraph II. states: "Academic
10 Misconduct is any intentional or unintentional occurrence of the following: A. Using the words or
11 ideas of another, from the internet or any source, without proper citation of the source(s),
12 commonly called plagiarism." Defendants deny each and every other allegation contained within
13 this paragraph.

14 12. Defendants admit the allegations contained within this paragraph with the exception
15 of Plaintiff providing the wrong job title of Philip Burns which is correctly stated in paragraph 10
16 above.

17 13. Defendants admit the UNLV Academic Integrity Appeal Panel held a hearing on
18 October 20, 2011 regarding the appeal by Plaintiff of the academic misconduct charges against
19 her. This panel issued a written report on October 21, 2011. The panel recommended Plaintiff be
20 removed from the Department of Chemistry Ph.D. program because of plagiarism. Defendants
21 deny each and every other allegation contained within this paragraph which is not in conformance
22 with the written report which speaks for itself.

23 14. Defendants deny the allegations were completely false and without any evidentiary
24 support. Defendants lack the knowledge or information sufficient to form a belief about the truth
25 of the remaining allegations within this paragraph and therefore deny. However, Defendants
26 would submit Plaintiff was shocked and distraught she was caught plagiarizing. She initially
27 accepted responsibility for her actions in the Alleged Academic Misconduct Report and in her
28 written statement to and hearing before the Academic Integrity Appeal Panel. Plaintiff admitted

1 deep regret for the mistake she had made; profusely apologized; and stated she was terribly
2 disappointed with herself.

3 15. Upon information and belief, Plaintiff did not request an advisor for her hearing on
4 October 20, 2011. Defendants deny each and every other allegation contained within this
5 paragraph.

6 16. Defendants admit both Plaintiff and Defendant Professor Hodge presented
7 documentary evidence prior to and/or at the Academic Appeal Integrity Appeal Panel hearing.
8 Both Plaintiff and Defendant Professor Hodge presented live testimony. The panels' written report
9 including but not limited to its findings speaks for itself. The panel did recommend Plaintiff be
10 removed from the Department of Chemistry Ph.D. program due to plagiarism. Defendants deny
11 each and every other allegation contained in this paragraph.

12 17. Admit the hearing panel did find Plaintiff responsible for academic misconduct. It
13 is important to note the panel was unbiased and not prejudiced in this matter. It consisted of a
14 doctoral student; a tenured faculty member from the College of Hotel Administration; and an
15 administrative faculty member from the library. Defendant's admissions alone were enough to
16 find her responsible in this matter. Defendants deny each and every other allegation contained
17 within this paragraph.

18 18. Deny.

19 19. Deny. As of the date the complaint was filed in this matter and subsequent thereto
20 Plaintiff is still currently enrolled in the Chemistry program and pursuing her appeal rights.

21 20. Deny.

22 **FIRST CAUSE OF ACTION**

23 ***BREACH OF CONTRACT***

24 21. Defendants incorporate by reference as though set out in full herein paragraphs 1-20
25 above.

26 22. Defendants deny paragraphs 22-24.

27 23. Responding to paragraph 25, Defendants deny Plaintiff is entitled to attorney's fees
28 and costs. Defendants lack the knowledge or information sufficient to form a belief about the truth

1 of the remaining allegations within this paragraph and therefore deny.

2 **SECOND CAUSE OF ACTION**

3 ***NEGLIGENCE/NEGLIGENT HIRING, TRAINING, & SUPERVISION***

4 24. Defendants incorporate by reference as though set out in full herein paragraphs 1-23
5 above.

6 25. Responding to paragraphs 27-29, the allegations call for legal conclusions and
7 require no response. Also, Defendants lack the knowledge or information sufficient to form a
8 belief about the truth of the allegations within this paragraph and therefore deny. Defendants deny
9 there has been any legally actionable conduct in this matter. However, in general terms,
10 Defendants have a duty to not violate the constitutional rights of their students; should not hire
11 individuals with known propensities to commit unlawful acts against students; and have a duty
12 when legally required, necessary and relevant to train and supervise their agents, officers, and
13 employees. Defendant Professor Hodge is a respected, qualified and long standing Professor with
14 excellent credentials.

15 26. Responding to paragraph 30, Defendants deny.

16 27. Responding to paragraph 31, Defendants deny Plaintiff is entitled to attorney's fees and
17 costs. Defendants lack the knowledge or information sufficient to form a belief about the truth of
18 the remaining allegations within this paragraph and therefore deny.

19 **THIRD CAUSE OF ACTION**

20 ***INTENTIONAL AND NEGLIGENT INFLICTION OF SEVERE MENTAL DISTRESS***

21 28. Defendants incorporate by reference as though set out in full herein paragraphs 1-27
22 above.

23 29. Defendants deny the allegations contained within paragraphs 33-36.

24 30. Responding to paragraph 37, Defendants deny Plaintiff is entitled to attorney's fees
25 and costs. Defendants lack the knowledge or information sufficient to form a belief about the truth
26 of the remaining allegations within this paragraph and therefore deny.

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28 ///

FOURTH CAUSE OF ACTION

INJUNCTIVE AND DECLARATORY RELIEF

31. Defendants incorporate by reference as though set out in full herein paragraphs 1-30 above.

32. Defendants deny the allegations contained within paragraphs 39-43.

33. Responding to paragraph 44, Defendants deny Plaintiff is entitled to attorney's fees and costs. Defendants lack the knowledge or information sufficient to form a belief about the truth of the remaining allegations within this paragraph and therefore deny.

FIFTH CAUSE OF ACTION

DEFAMATION, LIBEL AND SLANDER PER SE

34. Defendants incorporate by reference as though set out in full herein paragraphs 1-33 above.

35. Defendants deny the allegations contained within paragraphs 46-50.

36. Responding to paragraph 51, Defendants deny Plaintiff is entitled to attorney's fees and costs. Defendants lack the knowledge or information sufficient to form a belief about the truth of the remaining allegations within this paragraph and therefore deny.

SIXTH CAUSE OF ACTION

CIVIL RIGHTS VIOLATION, DUE PROCESS VIOLATION, FIFTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

37. Defendants incorporate by reference as though set out in full herein paragraphs 1-36 above.

38. Defendants deny the allegations contained in paragraphs 53-58.

39. Responding to paragraph 59, Defendants deny Plaintiff is entitled to attorney's fees and costs. Defendants lack the knowledge or information sufficient to form a belief about the truth of the remaining allegations within this paragraph and therefore deny

40. Defendants deny each and every allegation within Plaintiff's prayer for relief.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants have at all relevant times acted in good faith and without malice toward Plaintiff.

THIRD AFFIRMATIVE DEFENSE

The negligence of Plaintiff caused or contributed to any injuries or damages which Plaintiff may have sustained and the negligence of Plaintiff, in comparison with the alleged negligence of the Defendants, if any, requires that the damages of Plaintiff be denied or be diminished in proportion to the amount of negligence attributable to Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

That at the time and place alleged in the Complaint, Plaintiff did not exercise ordinary care, caution or prudence to avoid said incident and the resulting damages, if any, complained of were directly and proximately contributed to and caused by the fault, carelessness and negligence of the Plaintiff, which negligence was greater than the alleged negligence of the Defendants.

FIFTH AFFIRMATIVE DEFENSE

Defendants allege that the damages, if any, which Plaintiff alleges to have sustained, were caused in whole or part by the acts and/or omissions or negligence of third parties over whom the Defendants had no control and for whose conduct the Defendants are not responsible.

SIXTH AFFIRMATIVE DEFENSE

The injuries sustained by Plaintiff, if any, were caused by the acts of third persons who were not agents, servants or employees of these answering Defendants and who were not acting on behalf of these answering Defendants in any manner or form, and as such, the University Defendants are not liable in any manner to Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate her damages and, to the extent of that failure, she is precluded from recovering against the Defendants.

EIGHTH AFFIRMATIVE DEFENSE

Defendants allege that any and all harms the Plaintiff alleges in her complaint and if any actually exist are the result of pre-existing conditions or injuries.

NINTH AFFIRMATIVE DEFENSE

That not all of Plaintiff's medical and/or psychological treatment may be reasonable and necessary for the type of injury for which Plaintiff complains.

TENTH AFFIRMATIVE DEFENSE

In the event DOE Defendants are named proper parties to the action, Defendants reserve the right to assert any cross-claim against those DOE parties.

ELEVENTH AFFIRMATIVE DEFENSE

In the event recovery is allowed against more than one defendant in this action, then the liability of the Defendants, if any, shall not be joint and several, but shall be several to the Plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to these answering Defendants.

TWELFTH AFFIRMATIVE DEFENSE

Pursuant to NRS 41.035, the Defendants liability in this matter is limited. The amount will depend on how the statute is interpreted but any amount awarded cannot exceed \$50,000.00 or \$75,000.00 and punitive or exemplary damages may not be awarded.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff comes before this Court with unclean hands. Therefore, she should not be entitled to any type of equitable and/or legal relief.

FOURTEENTH AFFIRMATIVE DEFENSE

No conduct of a University employee or agent on duty on the date of the incident proximately caused or contributed to the injuries of which Plaintiff complains in this matter.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred by the doctrines of waiver and/or estoppel. By her own actions and/or inactions, Plaintiff should be found to be estopped and/or barred from asserting any claims against Defendants or found to have waived her rights to any type of relief.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff at the time of filing her complaint and subsequent thereto had failed to exhaust her administrative remedies as provided by the policies and procedures at UNLV.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff assumed the risk regarding some or all of the allegations contained within her complaint.

EIGHTEENTH AFFIRMATIVE DEFENSE

Under the allegations contained in Plaintiff's Complaint, Defendants are immune from suit, as a matter of law. Also, Defendants are entitled to all the privileges and protections afforded by law including but not limited to NRS Chapter 41.

NINETEENTH AFFIRMATIVE DEFENSE

Defendants are immune from some or all of Plaintiff's claims pursuant to NRS 41.032.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff based upon the facts alleged in the complaint may not bring a civil rights action and/or any other federal cause of action due to her failure to properly allege 42 U.S.C. Section 1983.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendants are entitled to absolute and/or qualified good faith immunity from damages in this matter.

TWENTY-SECOND AFFIRMATIVE DEFENSE

UNLV (State of Nevada real party in interest) and Dr. Hodge acting in his official capacity may not be sued in this matter due to the official capacity doctrine (applicable in 42 USC Section 1983 actions) and/or the Eleventh Amendment to the United States constitution.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Any award of costs and fees is a matter of law and not of entitlement.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

This alleged affirmative defense is properly the burden of proof of Plaintiff. To the extent it may be construed otherwise, the answering Defendants were not personally involved and/or the

1 cause in fact and/or proximate cause of Plaintiff's alleged damages.

2 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

3 There was a failure of consideration to form any alleged contract.

4 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

5 The actions and/or inactions of Plaintiff were fraudulent and/or illegal. Therefore, she
6 should be prevented from recovering damages in this matter and/or being awarded any type of
7 equitable relief. In the alternative, Plaintiff's damages, if any, were the result of her own
8 intentional and/or negligent acts and she is solely responsible for the same.

9 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

10 Student academic misconduct cases are multidimensional and involve a decision making
11 process where numerous factors including credibility are considered. Any actions of Defendants
12 in this matter were discretionary, even assuming Plaintiff can prove some type of contractual
13 relationship, and not a breach of contract.

14 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

15 It is respectfully submitted this is a case where judicial restraint (deference) must be
16 exercised. This judicial reluctance to intrude upon university decisions is imbedded in the deeply
17 rooted principles of academic freedom. Academic freedom has been viewed as a special concern
18 of the First Amendment.

19 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

20 Plaintiff failed to fulfill the necessary conditions of any alleged contract. Also, any alleged
21 contract is subject to the equitable remedy of rescission due to Plaintiff's conduct.

22 **THIRTIETH AFFIRMATIVE DEFENSE**

23 Punitive damages may not be awarded in a breach of contract action.

24 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

25 Any alleged contract in this matter is based upon a mutual and/or unilateral mistake of fact.

26 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

27 The doctrine of equitable estoppel prevents Plaintiff from asserting legal rights, which in
28 equity and good conscience, she should not be allowed to assert because of her own conduct in this

1 matter.

2 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

3 Any alleged contract may be barred by the statute of frauds. Any alleged oral contract is
4 unenforceable due to many factors including but not limited to a lack of meeting of the minds,
5 mistake of fact, the lack of the essential elements needed to form a contract etc.

6 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

7 If Plaintiff's negligence and/or other relevant causes of action fail then there can be no
8 recovery for intentional and/or negligent infliction of emotional distress.

9 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

10 Any alleged defamatory statements and/or libel in this matter were true and/or substantially
11 true i.e. Plaintiff did plagiarize one or more portions of her dissertation. She has for all intents and
12 purposes admitted this fact.

13 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

14 Any alleged defamatory statements and/or libel in this matter were more properly
15 denominated to be statements of opinion rather than fact.

16 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

17 Any alleged statements in this matter are entitled to absolute, qualified and/or a conditional
18 privilege including but not limited to the common interest privilege; quasi- judicial privilege;
19 and/or The Family Educational Rights and Privacy Act (FERPA).

20 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

21 The actions of Defendant(s) were while performing a discretionary duty and/or while
22 acting reasonably within the scope of their duties and authority. There was a reasonable basis for
23 the actions of Defendant(s). Therefore, the actions or inactions of Defendant(s) were legally
24 justified, under lawful authority and/or privileged. Also, or in the alternative, Defendant(s) acted
25 with due care and circumspection at all relevant times in the performance of any and all duties
26 imposed upon them by law.

27 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

28 Plaintiff may have failed to join indispensable parties and/or persons necessary for a just

adjudication of this action.

FORTIETH AFFIRMATIVE DEFENSE

Plaintiff is not likely to succeed on the merits, has an adequate remedy at law, is not favored by the public interest, and therefore is not entitled to any type of injunctive relief.

Defendants have asserted all appropriate and possible affirmative defenses known to them at this time. However, further investigation and discovery may well disclose additional affirmative defenses. Defendants reserve the right to assert such additional defenses if and when they become known.

Based on the foregoing, the University Defendants request judgment against Plaintiff as follows:

- (a) Plaintiff be awarded no monetary damages or equitable relief as a result of the filing of her complaint and this entire action be dismissed with prejudice;
- (b) Judgment be entered in favor of the Defendants;
- (c) Defendants be awarded their litigation expenses and costs of suit incurred herein;
- (d) Defendants be awarded reasonable attorneys' fees; and
- (e) Defendants be awarded such other and further relief as the Court deems proper.

DATED: April 20, 2012.




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Las Vegas and Vernon Hodge*

CERTIFICATE OF SERVICE

I certify that on this date, April 20, 2012, I served the following *ANSWER TO COMPLAINT* via electronic service on the date and to the address(es) shown below:

Jason J. Bach, Esq.
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